

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
NFL Enterprises LLC,)	MB Docket No. 08-214
Complainant)	File No. CSR-7876-P
v.)	
Comcast Cable Communications, LLC,)	
Defendant)	
To: Marlene H. Dortch, Secretary Federal Communications Commission		
Attn: Richard L. Sippel Chief Administrative Law Judge		

**DEFENDANT'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS**

Defendant Comcast Cable Communications, LLC ("Comcast") hereby moves to compel Complainant NFL Enterprises LLC and the National Football League (the "League"; together with Complainant, the "NFL") to produce certain documents in response to Comcast's document requests (the "Requests").¹

PRELIMINARY STATEMENT

In this proceeding, the NFL claims that Comcast has discriminated against it by not distributing the NFL's football network as broadly as certain other sports networks owned by Comcast. In response, Comcast claims that the NFL programming is more limited (it is limited to football and offers only eight live regular season games and very little other live game programming) and more expensive (its rate per subscriber is more than twice as high as the rate for Versus or The Golf Channel). This unattractive combination of limited live games

¹ See Comcast Cable Communications, LLC's Request to NFL Enterprises LLC and the National Football League for Production of Documents (Dec. 5, 2008) (attached as Exhibit A).

programming and high price has caused many distributors, not just Comcast, either not to carry the NFL's network at all, or to offer it in a sports package so that NFL football fans willing to pay a higher price will get the network, but those consumers who do not want the network will not be forced to pay for it. (At last count, there were at least seven other major distributors, including one controlled by an NFL owner, that have rejected the NFL's carriage demands.)

This rejection of the NFL Network by major market players demonstrates convincingly that the NFL's price and carriage demands are not competitive. It is not discrimination to differentiate carriage of programming based on variety and price, especially where (as here) that differentiation is common in the market, not unique to Comcast. For this reason, Comcast requested that the NFL produce documents relating to its efforts to persuade other carriers in the market to distribute the NFL Network. Significantly, the NFL has not objected to the relevance of documents from other carriers showing their unwillingness to carry the NFL Network on the terms demanded by the NFL – but the NFL agreed to produce only a small subset of those documents, and has refused to produce the NFL's own internal analyses of the unattractiveness of the NFL Network to distributors. There is no legitimate basis for the NFL to withhold its own documents on this issue: it is the NFL's own documents which are the most probative because they may, and we suspect do, contain damning admissions by the NFL itself that its programming is too limited and too expensive to merit broad distribution.

Further, the NFL has used inducements, including the chance to bid on live game rights, to obtain distribution of the NFL Network. The use of such inducements is relevant to both the NFL Network's ability to compete – which the NFL has placed at issue in this proceeding – and to the pricing of the distribution deals for the NFL Network that the NFL has struck. The NFL should be compelled to produce documents relating to its use of live game rights as inducements

for distribution by multichannel video programming distributors (“MVPDs”) other than Comcast.

**COMCAST’S DOCUMENT REQUESTS
AND THE NFL’S OBJECTIONS**

Comcast served the Requests on Complainant and the League on December 5, 2008. The NFL served written responses and objections on December 15, 2008.² This motion concerns the parties’ disputes over the NFL’s responses to two requests, the NFL’s refusal to collect and produce documents from the League in response to certain requests; and the NFL’s refusal to collect documents in response to certain requests beyond documents collected in response to different document requests in the related litigation between the parties in New York State Court (the “New York Actions”).

A. Request No. 5

Comcast’s Request No. 5 calls for the production of:

“All documents relating to the reasons that any Distributor declined to distribute the NFL Network at the level of distribution requested or desired by the NFL Network.”

Ex. A. at 5. In its written response, the NFL agreed to search for and produce non-privileged documents “received from the ten largest MVPDs in the United States (measured by number of subscribers) reflecting their responses to the NFL Network’s proposal of carriage terms.” Ex. B at 4. Significantly, although the NFL went on to object to the relevance of “a more extensive search or production,” the NFL *did not object* to the relevance of distributors’ responses to the NFL’s proposed carriage terms. *Id.* The parties have discussed the NFL’s response to Request

² See Responses and Objections of NFL Enterprises LLC to Comcast’s Request For Production of Documents (Dec. 15, 2008) (attached as Exhibit B).

No. 5, and last week the NFL informed Comcast that it is standing on its written objections, under which the NFL is withholding its own internal documents – a likely source of highly probative admissions – regarding the reasons distributors have elected not to carry the NFL Network (“NFLN”) on the NFL term’s.

B. Request No. 10

Requests No. 10 calls for the production of:

“All documents relating to any relationship between Live Game Rights and the NFL’s strategies for distributing the NFL Network.”³

For this purpose, “Live Game Rights” are defined as “rights to telecast live National Football League games, including but not limited to packages of games such as Sunday Ticket and the Thursday/Saturday games.”⁴ In its written responses, the NFL stated that it would produce only documents that “evidence statements by Comcast” regarding two narrow topics related to game rights.⁵ In subsequent discussions between the parties, the NFL has indicated that it will not produce documents relating to the NFL’s use of game rights as leverage for obtaining distribution of the NFLN from distributors other than Comcast.

C. Collection of Documents from the National Football League and Collection After March 31, 2008

On November 26, 2008, Comcast asked Complainant’s counsel, Covington & Burling, if they would accept service of document requests on the National Football League – and indicated

³ Ex. A at 5.

⁴ Ex. A at 5 (Instruction No. 12).

⁵ Ex. B. at 6.

that Comcast would seek a subpoena if Covington would not.⁶ Covington responded that it would not object to document requests directed to the League and that if “otherwise unobjectionable requests seek documents likely to be within [the League’s] custody and control, we will not require subpoenas as a condition of production.”⁷ Accordingly, the Requests that Comcast served on Covington were directed to both Complainant and the League, and those Requests defined the “NFL” to encompass both Complainant and the League. The NFL objected to the Requests “to the extent that they seek documents that are in the possession or control of the National Football League, which is not a party in this action.”⁸

In addition, the Requests (dated December 5, 2008) instructed the NFL to produce documents “created or relating to the period from January 1, 2003 to the present.”⁹ The NFL objected to this instruction and stated it would limit its production to “documents created during the period from January 1, 2004, through March 31, 2008.”¹⁰ The NFL subsequently explained that March 31, 2008 is the cut-off for its collection for documents responsive to Comcast’s entirely separate document requests in the New York Actions.

⁶ See Exhibit C.

⁷ Exhibit D.

⁸ Ex. B. at 1.

⁹ Ex. A at 2 (Instruction F).

¹⁰ *Id.* General Responses and Objections, ¶ 2.

An e-mail message from the NFL dated March 4, 2009 indicates that the NFL did not search for documents – including documents in the League’s possession – that were responsive to Requests 5, 9 or 10 after March 31, 2008.¹¹

ARGUMENT

A. The NFL Should Be Compelled to Produce All Documents Responsive to Request No. 5

Comcast is entitled to documents in the NFL’s possession showing that major cable companies are not interested in distributing the NFLN at the high price and unwarranted carriage demanded by the NFL. The NFL has unjustifiably limited its production of such documents to only a very small subset “received from” distributors, and thus is improperly refusing to produce *admissions* that the NFLN carriage and price demands are unreasonable.

Although this issue has not been a topic of discovery in the New York Actions, Comcast has obtained through that related litigation a small number of documents from the NFL’s files touching on the issue. For example, an internal NFLN “Distribution Strategy” presentation confirms, based on NFLN field representatives’ meetings with major cable distributors, that the price of the NFLN is a “BIG” factor in those distributors’ unwillingness to distribute the NFLN at the carriage levels sought by the NFL.¹² For Time Warner, the presentation identifies the “Major obstacles” as “price on distribution benchmarks, system pushback is primarily a cost

¹¹ See Ex. E. Comcast has requested further clarification regarding the extent to which the NFL collected documents after March 31, 2008 responsive to other document requests, but the NFL has not yet responded. See Ex. F.

¹² See Ex. G.

issue – at a lower price, there’s a place on digital basic or potentially analog.”¹³ Given the obvious relevance of documents like this to the NFL’s claims in this action, Comcast is entitled to full discovery on this issue (and not only the peephole into the issue afforded by the discovery in the New York Actions).

Among other documents, Comcast is entitled to the documents from the NFL’s lawsuits against Charter and EchoStar that the NFL has sealed from public view. In both lawsuits, the NFL sued to obtain increased distribution, and the sealed documents will show why both distributors did not distribute the NFLN at the distribution level the NFL sought – and why Charter subsequently dropped the NFLN entirely. The Charter documents are especially relevant, because Charter is controlled by NFL team owner Paul Allen, who obviously is interested in the NFLN succeeding.

It is no mystery why the NFL does not want to produce its internal admissions that the NFLN’s price and carriage demands are unreasonable, or corroboration of that unreasonableness by, among other documents, those concerning a cable company controlled by an NFL team owner. But the NFL should not be permitted to hide those highly probative documents from Comcast, the Presiding Judge and the Commission.

**B. The NFL Should Be Compelled to Produce
All Documents Responsive to Request No. 10**

By alleging that Comcast has “unreasonably restrained” the NFLN’s ability to “compete fairly,” the NFL has placed directly at issue how, in fact, the NFLN competes. Moreover, by proffering expert testimony using certain estimates of pricing from the NFLN’s carriage deals

¹³ Ex. G at 4.

with a small number of other distributors to yield a supposed “fair market value” for the NFLN among those distributors,¹⁴ the NFL has put at issue what inducements – including those relating to rights to NFL games not on the NFLN – the NFL offered to other distributors to obtain NFLN carriage at agreed levels of distribution and price.

Comcast knows from its own experience that the NFL uses rights to NFL games not on the NFLN as leverage to obtain better distribution for the NFLN than the network warrants, and the NFL’s use of that leverage more generally is implied by documents produced in the New York Actions (where discovery focuses on the use of such game rights as leverage against Comcast). Comcast is entitled to know how the NFL has used such game rights as leverage to obtain, or to attempt to obtain, distribution by MVPDs other than Comcast. Allowing the NFL to withhold documents on this issue would unfairly hinder Comcast’s ability to show that the NFLN’s competitiveness was not harmed by Comcast’s distribution of that network, and that the NFLN’s pricing to other distributors is inflated by, among other factors, the use of game rights.

Moreover, because one of the NFL’s own lawyers has explained that those game rights are controlled by the League and not by Complainant, it is particularly important that responsive documents be collected from the League.¹⁵

C. The NFL Should Be Compelled to Conduct a Search for Documents Responsive to the Requests After March 31, 2008

After suing Comcast in New York State court in October 2006, the NFL elected to open a second litigation front against Comcast on May 6, 2008 by bringing a program carriage

¹⁴ See NFL Enterprises LLC’s Expert Opinion Summary (Dec. 12, 2008) at 3; Report of Dr. Hal J. Singer (Mar. 6, 2009) ¶¶ 63-84.

¹⁵ See Ex. H (White Aff.) ¶¶ 3-4.

complaint that, as the NFL concedes, raises issues beyond those in the New York Actions. But rather than undertake a systematic search for documents responsive to Comcast's document requests in this FCC proceeding – including Requests No. 5 and 10 – the NFL appears to have relied almost exclusively on its prior collection efforts in response to different document requests in the New York Actions, which collected documents dated through March 31, 2008. As a result, only a small portion of the documents that the NFL has produced in this FCC proceeding are dated after March 31, 2008.¹⁶ In its own documents requests, the NFL demanded production through the date of the responses,¹⁷ and Comcast, at significant expense, has produced documents collected through December 5, 2008.

It was the NFL's choice to bring a carriage complaint against Comcast, and it must consequently abide by its discovery obligation before this tribunal. Accordingly, Comcast respectfully requests an order compelling the NFL to conduct a systematic search for, and to produce, responsive documents dated after March 31, 2008.

¹⁶ Although the NFL has trumpeted the number of pages that it has produced (3/3/09 NFL Motion to Compel at 2, 6), much of the NFL's production is comprised of a small universe of extremely large documents. In fact, 35,738 of the pages produced by the NFL in response to the Requests are accounted for by a mere three documents that are 9,934, 11,470, and 14,334 pages in length. Another 32,484 pages are attributable to 38 spreadsheets ranging from 500 to 1,000 pages in length each. All of these lengthy documents were produced in a format (in which each page has a separate image) that made the documents virtually unusable. Comcast requested the production of a number of those documents in native format and received that production this morning. Comcast has agreed to reciprocate as to any similar request by the NFL.

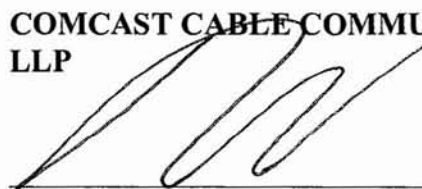
¹⁷ See NFL Enterprises LLC's Document Requests, Sched. B, ¶ 15 (Dec. 8, 2008) (attached as Exhibit I).

CONCLUSION

For these reasons, Comcast respectfully requests that the Presiding Judge issue an order compelling the NFL to produce all documents responsive to Requests No. 5 and 10, to compel full responses from the National Football League, and to compel both Complainant NFL Enterprises LLC and the National Football League to undertake a systematic search for responsive documents created since March 31, 2008.

Respectfully submitted,

**COMCAST ~~CABLE~~ COMMUNICATIONS,
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Its Attorneys

Dated: March 10, 2009

CERTIFICATE OF SERVICE

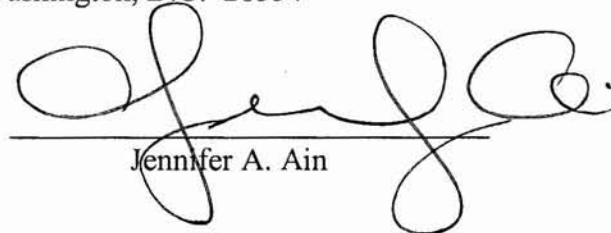
I, Jennifer A. Ain, hereby certify that, on March 10, 2009, copies of the attached Notice of Deposition were served by e-mail on the following individuals:

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Jennifer A. Ain

* Courtesy copy

Exhibit A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
NFL Enterprises LLC,)	MB Docket No. 08-214
Complainant)	File No. CSR-7876-P
v.)	
Comcast Cable Communications, LLC,)	
Defendant)	

**COMCAST CABLE COMMUNICATIONS, LLC'S
REQUEST TO NFL ENTERPRISES LLC AND
THE NATIONAL FOOTBALL LEAGUE
FOR PRODUCTION OF DOCUMENTS**

Pursuant to 47 CFR § 1.325 and the Procedural and Hearing Order dated December 1, 2008, Comcast Cable Communications, LLC hereby requests that NFL Enterprises LLC and the National Football League produce for inspection and copying at the offices of Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017, on a rolling basis beginning, as agreed by the parties, on December 22, 2008, and continuing until completed by a date mutually agreed by the parties.

INSTRUCTIONS

A. Produce all of the requested documents that are in the possession, custody or control, directly or indirectly, of the NFL (as defined below), regardless of the documents' location and regardless of whether such documents are held by agents, including, but not limited to, present or former trustees, employees, attorneys, investigators, accountants, partners, or other persons acting on behalf of, or in concert with, the NFL.

B. Each request should be considered as including all copies and, to the extent applicable, preliminary drafts of documents which, as to content, differ in any

respect from the original or final draft or from each other (e.g., by reason of handwritten notes or comments having been added to one copy of a document but not appearing on the original, or by reason of material attached to a copy but not to the original).

C. Each document is to be produced in its entirety, without abbreviation or limitation.

D. Where any document that appears to be within the category of documents requested is withheld, the NFL shall provide a log setting forth (i) the legal ground for withholding each such document; (ii) the type of document; (iii) the general subject matter of the document; (iv) the date of the document; (v) the names of every person or entity to whom the document has been distributed (or who has been privy to its contents); (vi) the facts and circumstances supporting any claim of privilege, in sufficient detail to permit the Presiding Judge to adjudicate the validity of withholding the document; and (vii) such other information as is sufficient to identify the document.

E. In producing documents, all documents that are physically or electronically attached to each other when located for production shall be left so attached. Documents that are segregated or separated from other documents, whether by inclusion of binders, files, subfiles, or by use of dividers, tabs, or any other method, shall be left so segregated or separated. Documents shall be retained in the order in which they were kept, in the files where they were found. If there are no documents responsive to a particular request, the NFL shall so state in writing.

F. This document request seeks all responsive documents created or relating to the period from January 1, 2003 to the present, unless otherwise stated.

G. This is a continuing request. If, after making an initial response to these document requests, NFL obtains or discovers any further information or documents responsive to these requests or becomes aware that a response is inaccurate, incomplete or misleading, it is required to amend its response

DEFINITIONS

1. "Comcast" means Comcast Cable Communications LLC and any of its affiliates, including but not limited to Comcast Corporation.
2. "Enterprises" means NFL Enterprises LLC and any of its officers, directors, employees, controlled affiliates, attorneys, accountants, representatives, or other agents and any party acting in concert with NFL Enterprises LLC.
3. The "League" means the National Football League, and any of its officers, directors, employees, controlled affiliates, attorneys, accountants, representatives, or other agents and any party acting in concert with the National Football League.
4. The "NFL" means Enterprises and the League.
5. The terms "and" and "or" have both conjunctive and disjunctive meanings, and references shall be construed as either singular or plural to bring within the scope of each request any documentation that might otherwise be construed to be outside its scope.
6. "Communication" means any transfer of information by use of any mode of conveying information, including, but not limited to, telephone, telegraph, facsimile, electronic mail, written or spoken language between two or more persons, groups of Persons, whether in the form of meetings, speeches, inquiries, conversations,

correspondence, notes or any responses thereto, as well as any document which abstracts, digests, transcribes, or records of any such transfer of information.

7. “Document” means any document, paper, book, account, letter, photograph, object or tangible thing which constitutes or contains evidence with the scope of the examination permitted by 47 CFR § 1.311(b).

8. “Person” means natural persons, businesses, corporations, public corporations, municipal corporations, state governments, local governments, agencies, partnerships, groups, associations, or other organizations.

9. “Referring to,” “relating to,” “reflecting,” or “concerning,” or any conjugation thereof, shall be considered in their broadest sense and shall mean all documents that comprise, evidence, explicitly or implicitly describe, were reviewed in conjunction with, or were generated as a result of the subject matter of the request, including, but not limited to, all documents that reflect, record, memorialize, discuss, mention, set forth, evaluate, consider, bear on, comment upon, support, contradict, negate, refute, arise from, review, report on, or pertain to the subject matter of the request, directly or indirectly, either in whole or in part.

10. “Distributor” means any former, existing or potential distributor of the NFL Network, including but not limited to a cable system operator, satellite company or a wireline provider of television programming.

11. “DMA” means Designated Market Area.

12. “Live Games Rights” means rights to telecast live National Football League games, including but not limited to packages of games such as Sunday Ticket and the Thursday/Saturday games.

13. “Other Distributor” means any distributor of the NFL Network other than Comcast.

14. “Penetration Level” means the number of NFL Network subscribers as a portion of a Distributor’s total number of subscribers.

REQUESTS FOR PRODUCTION

1. Documents sufficient to show the NFL Network’s monthly licensing revenue, net of rebates, marketing/promotional allowances, launch support, and other discounts, by DMA and Distributor.

2. Documents sufficient to show for each former or existing Distributor the monthly penetration level by DMA.

3. All documents relating to the pricing of the NFL Network to Distributors.

4. All documents relating to the relationship between the pricing of the NFL Network and the distribution of the NFL Network.

5. All documents relating to the reasons that any Distributor declined to distribute the NFL Network at the level of distribution requested or desired by the NFL Network.

6. All documents relating to the effects of Comcast’s distribution of the NFL Network solely on a sports tier on the NFL Network’s ability to compete fairly.

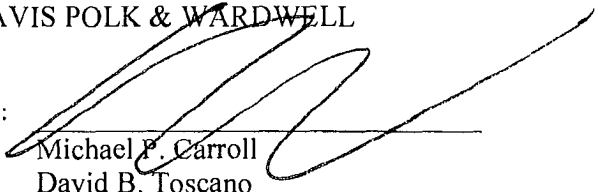
7. All documents relating to the NFL Network’s advertising sales (including prospective sales) from May 2007 through the present.

8. All documents relating to the NFL's acquisition of telecast rights (including attempts to acquire telecast rights) from May 2007 through the present.
9. All documents relating to the potential or actual grant of Live Game Rights either to Comcast or to the NFL Network.
10. All documents relating to any relationship between Live Game Rights and the NFL's strategies for distributing the NFL Network.

Dated: New York, New York
December 5, 2008

DAVIS POLK & WARDWELL

By:



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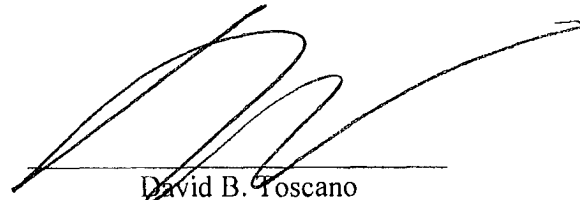
CERTIFICATE OF SERVICE

I, David B. Toscano, hereby certify that on December 5, 2008, I served a true and correct copy of Comcast Cable Communications, LLC's Request to NFL Enterprises LLC and the National Football League for Production of Document on the following individuals by electronic mail:

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David B. Toscano

Exhibit B

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
NFL Enterprises LLC,)	MB Docket No. 08-214
Complainant)	
v.)	File No. CSR-7876-P
Comcast Cable Communications, LLC,)	
Defendant)	
)	

**RESPONSES AND OBJECTIONS OF NFL ENTERPRISES LLC TO
COMCAST’S REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Section 1.325 of the Rules of the Federal Communications Commission, 47 C.F.R. § 1.325, Complainant NFL Enterprises LLC (“NFL Enterprises”) submits these responses and objections to Defendant Comcast Cable Communications, LLC’s (“Comcast’s”) Request to NFL Enterprises LLC and the National Football League for Production of Documents (the “Requests”).

GENERAL RESPONSES AND OBJECTIONS

1. NFL Enterprises objects to the Requests to the extent that they are irrelevant, overbroad, and to the extent that responding to them would impose on NFL Enterprises undue burden or expense.
2. NFL Enterprises objects to Instruction F as overbroad and unduly burdensome. In responding to the requests, NFL Enterprises will limit its production to documents created during the period from January 1, 2004, through March 31, 2008.
3. NFL Enterprises objects to the Requests to the extent that they seek documents that are in the possession or control of the National Football League, which is not a party in this action.

4. As more fully described below, in response to the Requests NFL Enterprises will undertake a reasonable search of NFL Enterprises' files located at its corporate offices in New York, New York, and/or Culver City, California, in which responsive documents would reasonably be expected to be found. To the extent that any request calls for a more extensive search, NFL Enterprises objects on the grounds that it is overly broad and unduly burdensome.

5. NFL Enterprises objects to the Requests to the extent that they seek documents protected from disclosure by the attorney-client privilege, work product doctrine, or other applicable privilege, protection, or immunity.

6. NFL Enterprises objects to the Requests to the extent that they seek information or documents that are confidential or otherwise commercially or competitively sensitive. NFL Enterprises will defer its response to requests that call for the production of such sensitive information until the Presiding Judge enters an appropriate protective order. Any documents produced in response to these Requests are protected to the full extent provided by such a protective order.

7. Nothing in these responses shall be construed as waiving any rights or objections that otherwise might be available to NFL Enterprises, nor should NFL Enterprises' responses be deemed an admission of relevancy, materiality, or admissibility of the request, the response thereto, or any documents produced.

8. These General Objections apply to all of NFL Enterprises' responses. To the extent that specific objections are cited in a specific response, they are not to be construed as a waiver of the application of any other General Objection to information falling within the scope of the request.

SPECIFIC RESPONSES AND OBJECTIONS

- 1. Documents sufficient to show the NFL Network's monthly licensing revenue, net of rebates, marketing/promotional allowances, launch support, and other discounts, by DMA and Distributor.**

In response to this Request and subject to the General Objections, NFL Enterprises will produce its currently effective affiliation agreements with the ten largest MVPDs with which NFL Enterprises has such agreements (measured by number of NFL Network subscribers as of July 31, 2008), as well as reports or remittances provided to NFL Enterprises by those MVPDs. To the extent that this request requires a more extensive search, response or production, NFL Enterprises objects because it is overbroad and unduly burdensome.

- 2. Documents sufficient to show for each former or existing Distributor the monthly penetration level by DMA.**

See Response to Request Number 1, above, which is incorporated herein by reference.

- 3. All documents relating to the pricing of the NFL Network to Distributors.**

See Response to Request Number 1, above, which is incorporated herein by reference. In addition, NFL Enterprises objects to this request on the ground that it is vague and ambiguous.

- 4. All documents relating to the relationship between the pricing of the NFL Network and the distribution of the NFL Network.**

See Response to Request Number 1, above, which is incorporated herein by reference. In addition, NFL Enterprises objects to this request on the ground that it is vague and ambiguous.

5. All documents relating to the reasons that any Distributor declined to distribute the NFL Network at the level of distribution requested or desired by the NFL Network.

Subject to General Objection 3, above, NFL Enterprises will conduct a reasonable search for documents received from the ten largest MVPDs in the United States (measured by number of subscribers) reflecting their responses to the NFL Network's proposal of carriage terms, and it will produce any responsive, non-privileged, non-protected documents identified in that search. To the extent that this request requires a more extensive search or production, NFL Enterprises on the ground that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

6. All documents relating to the effects of Comcast's distribution of the NFL Network solely on a sports tier on the NFL Network's ability to compete fairly.

Subject to General Objection 3, NFL Enterprises will conduct a reasonable search for documents relating to examples, mentioned in NFL Enterprises' filings or witness declarations in this proceeding, of instances where Comcast's distribution of the NFL Network solely on a sports tier adversely affected NFL Network's ability to compete fairly; NFL Enterprises will produce all responsive, non-privileged, non-protected documents identified in that search. To the extent that this request requires a more extensive search or production, NFL Enterprises objects to it because it is overbroad and unduly burdensome.

7. All documents relating to the NFL Network's advertising sales (including prospective sales) from May 2007 through the present.

In response to this request, NFL Enterprises will conduct a reasonable search for documents relating to examples, mentioned in NFL Enterprises' filings or witness

declarations in this proceeding, of instances in which Comcast's distribution of the NFL Network solely on a sports tier adversely affected NFL Network's ability to compete for advertising clients or advertising revenues; NFL Enterprises will produce all responsive, non-privileged, non-protected documents identified in that search. NFL Enterprises also will produce its weekly sales reports covering the period identified in the request. To the extent that this request requires a more extensive response, NFL Enterprises objects because it is overbroad and unduly burdensome.

8. All documents relating to the NFL's acquisition of telecast rights (including attempts to acquire telecast rights) from May 2007 through the present.

In response to this request, NFL Enterprises will conduct a reasonable search for documents that reflect the impact of Comcast's distribution of the NFL Network solely on a sports tier on NFL Enterprises' efforts to acquire telecast rights for the NFL Network during the period identified in the request. NFL Enterprises will produce all responsive, non-privileged, non-protected documents identified in that search. To the extent that this request requires a more extensive response, NFL Enterprises objects to it because it is overbroad and unduly burdensome.

9. All documents relating to the potential or actual grant of Live Game Rights either to Comcast or to the NFL Network.

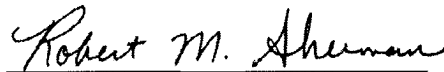
Subject to General Objection 3, NFL Enterprises will produce all non-privileged, non-protected documents in its possession that evidence statements by Comcast regarding (1) whether or not the National Football League's grant of game rights to NFL Enterprises or its failure to grant such rights to Comcast (or a Comcast-affiliated network) was a factor in Comcast's decision to move the NFL Network to the Sports Entertainment Package tier; or (2) Comcast's decision to make the grant of such rights to

Comcast (or a Comcast-affiliated network) a condition of its carriage of the NFL Network on a more broadly-penetrated programming tier. To the extent that this request requires a more extensive response, NFL Enterprises objects to it because it is grossly overbroad, unduly burdensome, and vague, and is not reasonably calculated to result in the production of admissible evidence.

10. All documents relating to any relationship between Live Game Rights and the NFL's strategies for distributing the NFL Network.

See Response to Request Number 9, above, which is incorporated herein by reference.

Respectfully submitted,

A handwritten signature in cursive script that reads "Robert M. Sherman". The signature is written in dark ink and is positioned above a horizontal line.

Jonathan D. Blake
Gregg H. Levy
Steven E. Fagell
Robert M. Sherman
Leah E. Pogoriler
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-6000

December 15, 2008

CERTIFICATE OF SERVICE

I, Robert M. Sherman, certify that on this 15th day of December, 2008, I caused a true and correct copy of the foregoing Responses and Objections to Comcast's Request for Production of Documents to be served via electronic mail upon:

David H. Solomon
L. Andrew Tollin
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, D.C. 20037

James L. Casserly
Michael H. Hammer
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, D.C. 20006

Michael P. Carroll
David B. Toscano
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017

Counsel to Comcast Cable Communications, LLC

Kris Anne Monteith
Hillary S. DeNigro
Gary Schonman
Elizabeth Mumaw
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

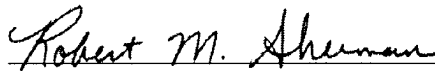

Robert M. Sherman

Exhibit C

DAVIS POLK & WARDWELL

450 LEXINGTON AVENUE
NEW YORK, NY 10017

212 450 4000
FAX 212 450 3800

MENLO PARK
WASHINGTON, D.C.
LONDON
PARIS
FRANKFURT
MADRID
TOKYO
BEIJING
HONG KONG

DAVID B. TOSCANO
212 450 4515
DAVID.TOSCANO@DPW.COM

November 26, 2008

Re: In re NFL Enters. LLC v. Comcast Cable Commc'ns, LLC,
FCC File No. CSR 7876 P

VIA ELECTRONIC MAIL

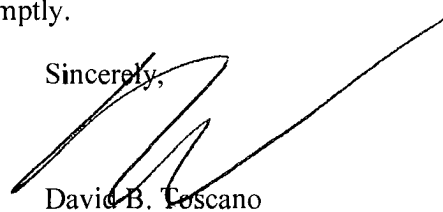
Mr. Gregg H. Levy
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Gregg:

In light of the December 5, 2008 deadline for serving document requests, we need to know as soon as possible whether the complainant in this proceeding, NFL Enterprises LLC ("Enterprises"), will agree to collect documents from the National Football League (the "League"), Paul Tagliabue and Frank Hawkins in response to document requests served on Enterprises. If not, we also need to know whether Covington will accept service for Messrs. Tagliabue and Hawkins (as it has done in the related New York lawsuits) and for the League.

Please let us know by close of business on Friday, November 28th so that we can, if necessary, seek subpoenas promptly.

Sincerely,



David B. Toscano

cc: Jonathan D. Blake
James M. Garland
Robert M. Sherman

David H. Solomon
L. Andrew Tollin

James L. Casserly
Michael H. Hammer

Exhibit D

From: Levy, Gregg [mailto:glevy@cov.com]
Sent: Thursday, November 27, 2008 8:14 AM
To: Toscano, David B.
Cc: Carroll, Michael P.; Perez-Marques, Antonio J.; Blake, Jonathan; Garland, James; Sherman, Robert; dsolomon@wbklaw.com; atollin@wbklaw.com; jcasserly@willkie.com; mhammer@willkie.com
Subject: Re: Comcast/NFL - Document Discovery

David,

I have now seen your letter demand of yesterday afternoon; I understand that you have also left an urgent message at the office, both seeking a response by close of business tomorrow.

It would never have occurred to me to impose on your holiday weekend -- or those of your colleagues -- by insisting that you assume the burden of preparing and serving subpoenas on those identified in your letter.

If you elect to allocate some of your ten document requests to requests of Mr. Tagliabue, Mr. Hawkins, or the NFL, we will not object. If such otherwise unobjectionable requests seek documents likely to be within their custody and control, we will not require subpoenas as a condition of production.

I hope that, with this assurance, you can and will enjoy your holiday weekend.

Gregg

From: Toscano, David B.
To: Levy, Gregg
Cc: Carroll, Michael P. ; Perez-Marques, Antonio J. ; Blake, Jonathan; Garland, James; Sherman, Robert; Solomon, David ; Tollin, Andrew ; Casserly, James ; Hammer, Michael
Sent: Wed Nov 26 12:54:05 2008
Subject: Comcast/NFL - Document Discovery
Attached please find correspondence concerning document discovery in the FCC proceeding.

David B. Toscano
Davis Polk & Wardwell
450 Lexington Avenue
New York, New York 10017
(212) 450-4515
(212) 450-3515 (facsimile)

Confidentiality Note: This e-mail is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential or otherwise protected from disclosure. Dissemination, distribution or copying of this e-mail or the information herein by anyone other than the intended recipient, or an employee or agent responsible for delivering the message to the intended recipient, is prohibited. If you have received this e-mail in error, please notify the sender immediately and destroy the original message and all copies.

Exhibit E

From: Sherman, Robert [rsherman@cov.com]
Sent: Wednesday, March 04, 2009 10:01 PM
To: Toscano, David B.
Cc: Ain, Jennifer A.; Blake, Jonathan; Levy, Gregg; Schmidt, Paul; Pogoriler, Leah
Subject: NFL Enterprises v. Comcast
Attachments: NFLE_FCC_0000001-NFLE_FCC_0096296_Custodian Report.xls

David,

As you requested during our call this morning, we are following up to explain the extent to which we have applied our objections to producing documents created after March 31, 2008 and to producing documents in the possession of the National Football League (the "League"), which, as you know, is not a party in this litigation.

With respect to Comcast's requests 1, 2, 3, 4, and 8, Enterprises has produced documents that fall within the category of documents described in Enterprises' responses and objections to those requests regardless of whether those documents are in the possession of Enterprises or the League and regardless of whether those documents were created before or after March 31, 2008.

In response to request 7, Enterprises has produced weekly advertising sales reports, which provide detailed information about Enterprises' sale of specific advertisements on the NFL Network and Enterprises' overall advertising revenues, without regard to whether these documents are in the possession of Enterprises or the League and regardless of whether these documents were created before or after March 31, 2008. Enterprises has produced certain additional documents that fall within the category of documents described in Enterprises' responses and objections to request 7 only up to March 31, 2008 because collecting documents created more than nine months after the events giving rise to this litigation would be unduly burdensome and would be unlikely to result in the production of relevant and admissible documents. Likewise, because League personnel ordinarily do not interact with NFL Network advertisers, Enterprises has not asked the League to collect documents in response to this request.

In response to requests 5, 9, and 10, Enterprises has produced documents that fall within the category of documents described in Enterprises' responses and objections to those requests regardless of whether those documents are in the possession of Enterprises or the League. However, Enterprises has not collected documents in response to these requests past March 31, 2008 because such a collection would be unduly burdensome and would be unlikely to result in the production of relevant and admissible documents, in part because any resulting documents would have been created more than nine months after the events giving rise to this litigation.

Enterprises does not believe that, subject to its objections, there are any documents responsive to request 6 that are not otherwise being produced in response to another request or that have not already been produced to Comcast in the New York litigation. If you believe that such documents exist, please let us know.

Finally, we are attaching a spreadsheet containing the custodian metadata that you requested this morning.

Neither this email nor Enterprises' production of documents to Comcast constitutes a waiver of any of its objections, nor does this email or any production reflect any position regarding the admissibility or relevance of any documents.

Rob

Robert M. Sherman | COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W. | Washington, D.C. 20004-2401
Tel: 202 662-5115 | Fax: 202 778-5115
<<NFLE_FCC_0000001-NFLE_FCC_0096296_Custodian Report.xls>>

Exhibit F

From: Ain, Jennifer A.
Sent: Sunday, March 08, 2009 6:55 PM
To: 'Sherman, Robert'
Cc: Schmidt, Paul; 'Pogoriler, Leah'; Toscano, David B.; Malaspina, Elizabeth
Subject: RE: NFL Enterprises v. Comcast

Rob,

We appreciate your explanation. After considering it, we have two questions that require further clarification.

After receiving Comcast's document requests in the FCC action, did the NFL specifically search for and collect documents responsive to Requests No. 1-4 and 8 in addition to documents already collected for the New York Actions, including but not limited to documents created after March 31, 2008?

Similarly, after receiving Comcast's FCC document requests, did the NFL specifically search for and collect documents in the League's possession that were responsive to Requests No. 1-4 and 8 in addition to documents already collected for the New York Actions?

Please let us know your responses as soon as possible.

Regards,

Jennifer

From: Sherman, Robert [mailto:rsherman@cov.com]
Sent: Wednesday, March 04, 2009 10:01 PM
To: Toscano, David B.
Cc: Ain, Jennifer A.; Blake, Jonathan; Levy, Gregg; Schmidt, Paul; Pogoriler, Leah
Subject: NFL Enterprises v. Comcast

David,

As you requested during our call this morning, we are following up to explain the extent to which we have applied our objections to producing documents created after March 31, 2008 and to producing documents in the possession of the National Football League (the "League"), which, as you know, is not a party in this litigation.

With respect to Comcast's requests 1, 2, 3, 4, and 8, Enterprises has produced documents that fall within the category of documents described in Enterprises' responses and objections to those requests regardless of whether those documents are in the possession of Enterprises or the League and regardless of whether those documents were created before or after March 31, 2008.

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possession of Enterprises or the League. However, Enterprises has not collected documents in response to these requests past March 31, 2008 because such a collection would be unduly burdensome and would be unlikely to result in the production of relevant and admissible documents, in part because any resulting documents would have been created more than nine months after the events giving rise to this litigation.

Enterprises does not believe that, subject to its objections, there are any documents responsive to request 6 that are not otherwise being produced in response to another request or that have not already been produced to Comcast in the New York litigation. If you believe that such documents exist, please let us know.

Finally, we are attaching a spreadsheet containing the custodian metadata that you requested this morning.

Neither this email nor Enterprises' production of documents to Comcast constitutes a waiver of any of its objections, nor does this email or any production reflect any position regarding the admissibility or relevance of any documents.

Rob

Robert M. Sherman | **COVINGTON & BURLING LLP**
1201 Pennsylvania Avenue, N.W. | Washington, D.C. 20004-2401
Tel: 202 662-5115 | Fax: 202 778-5115
<<NFLE_FCC_0000001-NFLE_FCC_0096296_Custodian Report.xls>>

Exhibit G

Exhibit Redacted

Exhibit H

Exhibit Redacted


Exhibit I

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
NFL Enterprises LLC,)	MB Docket No. 08-214
Complainant)	
v.)	File No. CSR-7876-P
Comcast Cable Communications, LLC,)	
Defendant)	
)	

**NFL ENTERPRISES LLC'S
DOCUMENT REQUESTS**

PLEASE TAKE NOTICE that, pursuant to the *Procedural and Hearing Order*, FCC 08M-50, MB Docket No. 08-214 (rel. Dec. 2, 2008), Complainant NFL Enterprises LLC hereby requests that Defendant Comcast Cable Communications, LLC provide a written response and produce the documents described in Schedule A, attached, in accordance with the Definitions and Instructions contained in Schedule B, attached. The written response shall be delivered and the responsive documents produced at the offices of Covington & Burling LLP, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004, on a rolling basis beginning no later than December 22, 2008, with all documents to be produced before a date to be agreed upon by the parties.


Jonathan D. Blake
Gregg H. Levy
James M. Garland
Robert M. Sherman
Leah E. Pogoriler
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-6000

Counsel for NFL Enterprises LLC

December 5, 2008

TO:

David H. Solomon
L. Andrew Tollin
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, D.C. 20037

James L. Casserly
Michael H. Hammer
Willkie Farr & Gallagher LLP
1875 K Street, N.W.
Washington, D.C. 20006

Michael P. Carroll
David B. Toscano
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017

Counsel to Comcast Cable Communications, LLC

Schedule A
DOCUMENT REQUESTS

1. All agreements and draft agreements concerning any MVPD's carriage of any of the Affiliated Networks.
2. All documents reflecting your analysis of the NFL Network, its target audiences, value proposition, advertisers, programming, content, or ratings, including but not limited to comparisons of the NFL Network to any of the Affiliated Networks.
3. All agreements and draft agreements concerning your investment in, or your receipt of any equity or financial interest in, or your receipt of any direct or indirect value from the former or original owner of, any program service (including non-sports program services) carried on one or more of your cable systems.
4. All agreements and draft agreements concerning your receipt of any payment, preferential arrangements, any other consideration or anything else of value, tangible or intangible (including programming concessions on other services), in connection with your carriage of any independent sports network on any tier or package other than the Sports Entertainment Package tier.
5. All documents concerning your decisions regarding the tier or package placement on your cable systems of the NFL Network or any of the Affiliated Networks.
6. Documents sufficient to determine the effect of the tier placement of the NFL Network on the advertising revenues of any Affiliated Network, including advertising sold by the network or by any MVPD or its affiliate or subsidiary (including Comcast Spotlight), and any projections, reports, analyses, or other documents addressing such effect.
7. Documents reflecting any bid, or an analysis of any bid, by an Affiliated Network for programming for which the NFL Network was a competing bidder (other than the eight-game package) after January 1, 2006, including but not limited to documents reflecting projections (including ratings, advertising sales, and subscriber fee increases), analyses of potential competing bidders (including NFL Enterprises LLC or its affiliates), and draft and final agreements for acquisition of such programming.
8. Documents sufficient to identify, for each month of the relevant period, the number of your subscribers nationwide, the tiers or packages on which the NFL Network and the Affiliated Networks were carried, and the number of subscribers to each such tier or package (e.g., reports provided to programmers pursuant to carriage agreements that require this information).
9. Documents sufficient to identify, for your ten largest cable systems by number of subscribers, for each month of the relevant period, the direct and indirect fees charged to subscribers to your second-most highly penetrated digital tier and the fees charged to subscribers to your Sports Entertainment Package tier (and any other tier or package that substantially includes program services included in the Sports Entertainment Package tier).

Schedule B
DEFINITIONS AND INSTRUCTIONS¹

1. "Affiliated Networks" means Versus and the Golf Channel, their predecessors (including the "Outdoor Life Network") and successors, any affiliated, related, or co-branded program services (including video-on-demand and other linear and non-linear program services), and any other program services in which Comcast holds a financial interest that compete with the NFL Network.
2. "Agreement" means any contract, partnership agreement, joint venture agreement, cooperation agreement, letter agreement, memorandum of understanding, or other contractual arrangement or non-contractual understanding, whether formal or informal and whether bilateral or multilateral.
3. "Analysis" means any study, evaluation, examination, investigation, assessment, presentation, discussion, appraisal, estimation, consideration, opinion, or prediction, whether formal or informal and whether shared with anyone other than the author or not.
4. "Comcast," "You," and "Your" mean Comcast Corp., Comcast Cable Communications, LLC, Comcast Cable Enterprises, LLC, the entities that operate the Affiliated Networks, and all of their present or former partners, directors, officers, employees, agents, attorneys, servants, parents, subsidiaries, affiliates and any other person or entity acting on their behalf or for their benefit.
5. "Concerning" means referring to, relating to, regarding, constituting, describing, discussing, analyzing, or evidencing.
6. "Document" means anything that contains information and which is in Your possession, custody or control. For purposes of these requests, the term "Document" has the broadest meaning permissible and includes, without limitation, emails, papers (whether handwritten or typed), memoranda, correspondence, notes, calendar entries, diaries, photographs, presentations, reports, receipts, invoices, ledger entries, microfilm, microfiche, and computer printouts, cards, tape recordings, disks, and other sources of electronically or magnetically maintained information. A Draft or non-identical copy is a separate document within the meaning of this term.
7. "Draft" means any earlier, preliminary, preparatory or tentative version of all or part of a Document, whether or not such Draft was superseded by a later Draft and whether or not the terms of the Draft are the same as or different from the terms of the final Document.
8. "Eight-Game Package" means the package of eight live National Football League games that the NFL Network carried beginning in the 2006-2007 football season and the package of eight live National Football League games that you sought to license for an Affiliated Network in December 2005.

¹ The definitions apply regardless of whether the defined term is capitalized in a request.

9. "Independent Sports Network" means any program service in which no MVPD holds a financial interest and that provides substantial programming relating to sporting events.
10. "Indirect Fees" mean any fees charged in connection with a subscriber's decision to subscribe to a particular tier, including but not limited to the cost to purchase any tiers of service that are required for the subscriber to be eligible to subscribe to the chosen tier.
11. "NFL Network" means the program service known as the NFL Network that you carry on your cable systems pursuant to the August 11, 2004 letter agreement between you and NFL Enterprises LLC, any non-linear content (including video on demand content) associated with that program service, and any content that is, was, or was at any time contemplated to be included in that program service's schedule.
12. "Multichannel Video Programming Distributor" and "MVPD" have the meaning described in 47 U.S.C. § 522(13). For the avoidance of doubt, all Comcast entities that qualify as MVPDs under 47 U.S.C. § 522(13) are included.
13. "Person" means any natural person, including (a) an employee or former employee, (b) any business entity including corporations, partnerships, proprietorships, groups, associations, or organizations, (c) any governmental entity and any department, agency, bureau, or other subdivision thereof, and (d) any agent or former agent of any of the foregoing.
14. "Value Proposition" means the term "value proposition," as that term is used in your Answer in this proceeding and in exhibits thereto.
15. Unless otherwise specifically set forth herein, this document request calls for the production of all documents in your possession, custody, or control that were authored, compiled, generated, possessed, prepared, read, received, recorded, referred to, reviewed, sent to or by, transmitted, utilized, or written by or on behalf of you, in the period commencing with January 1, 2004 and continuing through the date of your response. (This period is the "Relevant Period.")
16. The terms "and" and "or" shall be construed both disjunctively and conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope. The use of the singular form of any word includes the plural and vice versa.
17. "Including" shall be construed as "includes, without limitation" or "including, without limitation," so that each request shall be construed broadly, rather than narrowly, to bring within the scope of each request all responses that might otherwise be construed to be outside its scope.
18. In producing documents, all documents that are physically attached to each other shall be produced in that form. Documents that are segregated or separated from other documents, whether by inclusion in binders, files or sub-files, or by the use of dividers, tabs or any other method, shall be produced in that form. Documents shall be produced in the order in which they were maintained.

19. You are requested to promptly produce all responsive documents discovered, created, or that come into your possession at any time before the conclusion of this proceeding, regardless of whether the documents were included in your initial production.
20. If any document or any portion thereof responsive to any document request is withheld from production, including on the grounds of attorney-client privilege or the work-product doctrine, state: (a) the nature of the privilege or other basis for withholding the document, including information sufficient to evaluate the claim; (b) the type of document; (c) the general subject matter of the document; (d) the date of the document; and (e) such other information sufficient to identify the document, including, as appropriate, (i) the author of the document; (ii) the addressee(s) of the document and any other recipient(s) shown in the document; and (iii) when not apparent, the relationship of the author, addressee(s), and recipient(s) to each other. You shall supply this information at the same time you produce the documents responsive to these requests, or within a reasonable time thereafter.
21. If a document contains both privileged and non-privileged material, you shall disclose the non-privileged material to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a document, you shall clearly indicate the portions for which the privilege is claimed.
22. If any document or any portion thereof responsive to any document request has been discarded, destroyed or redacted in whole or in part, state: (a) the date of the discard, destruction or redaction; (b) the reason for the discard, destruction or redaction; (c) the person who discarded, destroyed or redacted the document; and (d) if discarded or completely destroyed, the files where the document was maintained prior to its destruction.
23. If you object to any request below or any part thereof, you shall identify the request or part thereof to which you object, state with specificity all grounds for the objection, and respond to any portion of the request to which you do not object.
24. If you object to any request below on the grounds that the request is ambiguous, overly broad, or unduly burdensome, you shall produce documents responsive to that request as narrowed to the least extent necessary, in your judgment, to render that request not ambiguous, overly broad, or unduly burdensome, and you shall state specifically the extent to which you have narrowed that request for purposes of your response.

CERTIFICATE OF SERVICE

I, Robert M. Sherman, certify that on this 5th day of December, 2008, I caused a true and correct copy of the foregoing Document Requests to be served via electronic mail upon:

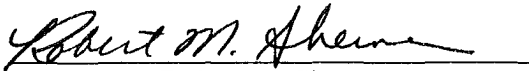
David H. Solomon
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Washington, D.C. 20037

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450 Lexington Avenue
New York, NY 10017

Counsel to Comcast Cable Communications, LLC

Kris Anne Monteith
Hillary S. DeNigro
Gary Schonman
Elizabeth Mumaw
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554


Robert M. Sherman